

REMARKS

Claims 1-6, 9, 10, 12, 13, 15, 16, 18, and 21-30 are currently pending in the application. Claims 1 and 21 are in independent form. Claims 7, 8, 11, 14, 17, and 19 have been canceled without prejudice to expedite the allowance of the present application.

Applicant expresses his gratitude for courtesies extended by the Examiner during a personal interview July 21, 2004 with Applicant's representatives Andrew M. Parial and Kenneth I. Kohn. During the personal interview, all outstanding prior art issues were discussed. Specifically, the Examiner suggested adding limitations set forth in claims 7, 8, 17, and 29 to pending independent claims 1 and 21 in order to place the present application in condition for allowance. Therefore, pursuant to the Examiner's suggestions, all limitations set forth in claims 7, 8, 17, and 29 have been added to pending independent claims 1 and 21.

Specifically referring to the Office Action, claim 1 has been objected to because "a container" should be changed to --the container--. In response thereto, claim 1 has been amended the claim pursuant to the Examiner's suggestion. Reconsideration of the rejection is respectfully requested.

Claims 1 and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the Henderson, et al. patent (U.S. Patent No. 4,815,761). Reconsideration of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

Anticipation has always been held to require absolute identity in structure between the claimed structure and a structure disclosed in a single reference. In Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986) it was held that "For prior art to anticipate under §102 it has to meet every element of the claimed invention." Further, in Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989) it was held that "Every element of the claimed invention must be literally present, arranged as in the claim."

The Office Action holds that the Henderson, et al. patent discloses an apparatus and method for moving a container (34) comprising a frame (18). The frame comprises a handle section (38) and clamping means for clamping the container comprising at least two clamping members (60), which are spaced apart from one

another. The clamping members include holding means (48) for holding the container therebetween in a clamping engagement. The frame and clamping means being arrangable in use to be secured to the container such that the container can rotate relative to the frame and the container can be rolled along a surface and movement of the container being controlled by the handle section.

In contradistinction, presently amended claims 1 and 21 are patentably distinct from the device disclosed in the Henderson, et al. patent. Specifically, the winged nuts of Henderson, et al. patent are not clamping members, but are merely nuts that screw onto the rod that extends through the buoyant roller (column 4, lines 5-6). The winged nuts do not clamp onto the buoyant roller, nor do they clamp onto the rod, as there is no clamping action in screwing the winged nuts onto the rod. Furthermore, the winged nuts are not operatively attached to the frame. The removal of the winged nuts will not release the buoyant roller because the buoyant roller is attached to the frame through the rod. There is no indication in Henderson, et al. patent that the buoyant roller is removable. In fact, it is an object of Henderson, et al. patent that the buoyant roller remains on the device so the frame and buoyant roller can serve as a floating work and dive flag platform (column 2, lines 9-11). Finally, the Henderson, et al. patent does not disclose first and second clamping members that are adjustable in a transverse direction towards each other as set forth in the presently amended claims 1 and 21. Thus, the device disclosed in the Henderson, et al. patent cannot be adjusted to accommodate various sized containers.

The apparatus of the present invention includes first and second side members rotatably connected to first and second clamping members. The first and second clamping members clamp onto a container. The first and second clamping members are spaced apart from one another and are adjustable in a transverse direction (i.e., first and second clamping members can be moved towards each other). Further, the first and second clamping members engage or clamp the object therebetween. The clamping members are operatively attached to the frame, as described in the amended independent claims, with support in the specification found at page 8, lines 30-32. The clamping members are a part of the frame and are not removed. Furthermore, the beer barrel is removably clamped to the frame. The beer

barrel can be attached by clamping with the clamping members, moved to a certain place, and then removed by removing the clamping members from the barrel. It is necessary for the beer barrel to be removed from the frame in order to be used. Therefore, since the Henderson, et al. patent does not disclose the claimed limitations of the present invention, the presently amended independent claims 1 and 21 are patentable over the Henderson, et al. patent. Reconsideration of the rejection is respectfully requested.

Claims 1-11, 21-28 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Dean patent (U.S. Patent No. 4,218,015) in view of the Henderson, et al. patent (U.S. Patent No. 4,815,761). Reconsideration of the rejection under 35 U.S.C. § 103(a) over the Dean patent in view of the Henderson, et al. patent, as applied to the claims is respectfully requested.

It is Hornbook Law that before two or more references may be combined to negative patentability of a claimed invention, at least one of the references must teach or suggest the benefits to be obtained by the combination. This statement of law was first set forth in the landmark case of Ex parte McCullom, 204 O.G. 1346; 1914 C.D. 70. This decision was rendered by Assistant Commissioner Newton upon appeal from the Examiner-in-Chief and dealt with the matter of combination of references. Since then many courts have, over the years, affirmed this doctrine.

The applicable law was more recently restated by the Court of Appeals for the Federal Circuit in the case of ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572,1577, 221 U.S.P.Q. 929 (Fed. Cir. 1984). In this case the Court held, on page 933, as follows:

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under Section 103 teachings of references can be combined only if there is some suggestion or incentive to do so. The prior art of record fails to provide any such suggestion or incentive. Accordingly we hold that the court below erred as a matter of law in concluding that the claimed invention

would have been obvious to one of ordinary skill in the art under section 103.

This Doctrine was even more recently reaffirmed by the CAFC in Ashland Oil, Inc. v. Delta Resins and Refractories, Inc., et al., 776 F.2d 281,297, 227 U.S.P.Q. 657,667. As stated, the District Court concluded:

Obviousness, however, cannot be established by combining the teachings of the prior art to produce the claimed invention unless there was some teaching, suggestion, or incentive in this prior art, which would have made such a combination appropriate.

The Court cited ACS Hospital Systems, Inc. in support of its ruling. This Doctrine was reaffirmed in In re Deuel, 34 USPQ2d 1210 (Fed. Cir. 1995).

The Office Action holds that the Dean patent discloses an apparatus and method for moving a container (1). The apparatus comprises a frame having first and second ends, a handle section (4) connected at the first end, and the container being secured to the second end of the frame. The container rotates relative to the frame and rolls along a surface. The Dean patent discloses the clamping members, but fails to show the clamping members, which can be moved toward each other. The Office Action holds that it would have been obvious to modify the apparatus disclosed in the Dean patent with the apparatus for transporting a tank having clamping members that can be moved toward each other as taught by Henderson, et al. patent.

In the Dean patent, Figure 2 shows that the frame is pivotally connected to the drum. The device of the Dean patent does not clamp the drum. Instead, the drum is merely placed between the arms of the frame. There is no disclosure of a clamping relationship in the Dean patent (i.e., no disclosure of a first and second clamping member that can be adjusted in a transverse direction relative to each other). Also, the device of the Dean patent would not function properly if a clamping engagement were used because a water supply is connected to the interior of the drum and therefore the connection cannot merely be made via a clamp, instead, it must involve a fluid connection. Furthermore, there is no suggestion that the drum is removable from the frame or that it is desirable to remove the drum from the frame. The drum can be refilled directly when attached to the handle through the opening

on the drum. There is no need to remove the handle in order to refill the drum. As discussed above, the Henderson, et al. patent does not disclose clamping members, nor clamping members that can move toward each other in a transverse direction. The winged nuts are merely screwed onto the rod going through the buoyant roller and cannot be adjusted for various sized containers therebetween.

In contradistinction, the apparatus of the present invention requires a frame with clamping members to clamp onto the ends of a beer barrel. Furthermore, the clamping members can removably clamp the beer barrel. The beer barrel is used only after the frame has been removed. The Dean patent does not disclose all of the required elements of the present invention, and therefore the *prima facie* case of obviousness is not met. Since neither the Dean nor the Henderson et al. patents, either alone or in combination, disclose or suggest the method and device of the presently pending independent claims, the claims are patentable over the Dean and Henderson et al. patents. Reconsideration of the rejection is respectfully requested.

Claims 12-16 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Dean patent (U.S. Patent No. 4,218,015) in view of the Henderson, et al. patent (U.S. Patent No. 4,815,761) as applied to claim 1 above, and further in view of the Gould, et al. patent (U.S. Patent No. 2,716,557). Reconsideration of the rejection under 35 U.S.C. § 103(a) over the Dean patent in view of the Henderson, et al. patent, further in view of the Gould patent, is respectfully requested.

The Office Action states that the combination of Dean and Henderson, et al. patents disclose the frame, but fail to show the width of the frame, which is adjustable. Gould, et al. in Figure 10 discloses an extensible and foldable hand truck comprising frame members (11, 12) having reinforcing members (13, 18) that are adjustable in a transverse direction. The Office Action states that it would have been obvious to modify the apparatus of Dean in view of Henderson, et al. with the adjustable frame members of Gould, et al.

As discussed above, the Dean and Henderson, et al. patents do not disclose the clamping members that can removably clamp an object such as a beer barrel. The Gould, et al. patent does in fact teach a frame that can be adjusted. However, the Dean and Henderson, et al. patents do not disclose any reasons that the

frames need to be adjusted. In the Dean patent, the buoyant roller is not removable from the frame. In the Henderson, et al. patent, the drum is not removable from the frame. Therefore, there is no need to have an adjustable frame if the object attached to the frame does not need to be removed.

In addition, the ratcheting mechanism set forth in the pending claims is not at all disclosed in the Gould, et al. patent. Therefore, since neither of the combined references alone or in combination suggests the currently claimed invention, it is respectfully submitted that the claims are clearly patentable over the combination, even if the combination were to be applied in opposition to applicable law. Reconsideration of the rejection is respectfully requested.

Claims 17-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Dean patent (U.S. Patent No. 4,218,015) in view of the Henderson, et al. patent (U.S. Patent No. 4,815,761) and the Gould, et al. patent (U.S. Patent No. 2,716,557), as applied to claim 14 above, and further in view of the Henderson, et al. patent. Reconsideration of the rejection under 35 U.S.C. § 103(a) over the Dean patent in view of the Henderson, et al. patent and Gould patent, further in view of the Henderson, et al. patent is respectfully requested.

The Office Action holds that the combination of the Dean, Henderson, et al., and Gould, et al. patents disclose the clamping members, but fail to show the clamping members, which are rotatably connected to the first and second side members. The Henderson, et al. patent discloses clamping members (36), which are rotatably connected to first and second side members (18). The Office Action holds that it would have been obvious to modify the apparatus disclosed by the Dean, Henderson, et al., and Gould, et al. patents with the clamping members disclosed in the Henderson, et al. patent that are rotatably connected.

As discussed above, the Dean and Henderson, et al. patents do not disclose the clamping members that can removably clamp an object such as a beer barrel, and the Gould, et al. patent in combination therewith does not teach the presently claimed invention. The Henderson, et al. patent does not disclose clamping members. Further, the Henderson, et al. patent does not disclose clamping members that are rotatably connected to the frame. Therefore, since neither of the combined

references alone or in combination suggests the currently claimed invention, it is consequently respectfully submitted that the claims are clearly patentable over the combination, even if the combination were to be applied in opposition to applicable law. Reconsideration of the rejection is respectfully requested.

Claim 29 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the Dean patent (U.S. Patent No. 4,218,015) in view of the Henderson, et al. patent (U.S. Patent No. 4,815,761) as applied to claim 21 above, and further in view of the Atwood patent (U.S. Patent No. 2,503,314). Reconsideration of the rejection under 35 U.S.C. § 103(a) over the Dean patent in view of the Henderson, et al. patent, further in view of the Atwood patent, as applied to the claims is respectfully requested.

The Office Action holds that the Dean and Henderson, et al. patents disclose the method of the clamping members, but fail to show a ratchet mechanism. Atwood discloses a stretcher having frame members (16, 17), support members (18, 28), and a ratchet mechanism (19). The Office Action holds that it would have been obvious to modify the apparatus disclosed by Dean and Henderson, et al. patents with the ratchet mechanism for adjusting the frame members in a transverse direction as taught by the Atwood patent.

As discussed above, the Dean and Henderson, et al. patents do not disclose the clamping members that can removably clamp an object such as a beer barrel. The Atwood patent does not disclose a ratcheting mechanism; instead, the Atwood patent discloses a latching mechanism to adjust the width of the stretcher. The latch member is pressed to slide the frame members closer together and then pressure is removed to allow the latch to lock into place. In contradistinction, the apparatus of the present invention uses a ratcheting mechanism to adjust the width of the frame, wherein the length of webbing decreases with every successive movement of the ratcheting mechanism. Therefore, since neither of the combined references alone or in combination suggests the currently claimed invention, it is consequently respectfully submitted that the claims are clearly patentable over the combination. Reconsideration of the rejection is respectfully requested.

The remaining dependent claims not specifically discussed herein are ultimately dependent upon the independent claims. References as applied against these dependent claims do not make up for the deficiencies of those references as discussed above. The prior art references do not disclose the characterizing features of the independent claims discussed above. Hence, it is respectfully submitted that all of the pending claims are patentable over the prior art.

In view of the present amendment and foregoing remarks, reconsideration of the rejections and advancement of the case to issue are respectfully requested. If any remaining issues exist, Applicants respectfully requests to contacted by telephone at (248) 539-5050.

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Respectfully submitted,

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